

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 124 of 1996

For Approval and Signature:

HONOURABLE MR. JUSTICE R.S.GARG sd/-

HONOURABLE MR. JUSTICE D.H.WAGHELA sd/-

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
GUJARAT STATE FINANCE CORP. - Respondent(s)

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Appearance :

MR MANISH R BHATT for Applicant(s) : 1,
 SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR JUSTICE R. S. GARG
and
HONOURABLE MR JUSTICE D.H. WAGHELA

Date : 03/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE R.S.GARG)

1. Mr Manish R Bhatt, learned counsel for the Revenue. None for the respondent, though served. The

Income Tax Appellate Tribunal, Ahmedabad Bench 'A', at the instance of the Revenue, under section 256 (1) of the Income Tax Act, 1961, has referred the following questions for opinion of this Court which arises out of Income Tax Appeal No.2893/Ahd/1992 relating to Assessment Year 1988-89:

“Whether, the Appellate Tribunal is right in law and on facts in allowing depreciation on guest house, in view of the provisions of section 37 (4) (ii) of the Act ?”

The respondent-assessee claims certain deductions relating to repairs etc. or certain expenditure on the guest house under section 37(4)(ii) of the Act submitting *inter alia* that the expenses were deductible because those were incurred on the premises and buildings well described in sections 30 and 32 of the Income Tax Act. The Assessing Officer rejected the claim relating to depreciation, on appeal, the First Appellate Authority allowed the claim of depreciation on the guest house following a decision of the Bombay High Court in the case of **CIT**

v. Chase Bright Steels (177 ITR 124) The Tribunal further followed a decision of this Court in the case of **CIT v. Maharana Mills Ltd.** (208 ITR 972)

2. Mr Bhatt, learned counsel for the Revenue submits that in view of the recent judgment of the Supreme Court in the case of **Britannia Industries Ltd. v. Commissioner of Income Tax & Anr.** (2005) 278 ITR 546, the order passed by the CIT (Appeals) and confirmed by the Tribunal cannot be allowed to stand.

3. In the matter of **Britannia Industries Ltd.** (supra), the Supreme Court had observed as under:

“While the expression “premises and buildings” in sections 30 and 32 of the Income Tax Act, 1961, and the expression “residential accommodation including any accommodation in the nature of guest house” in sub-sections (3), (4) and (5) of section 37 can be similarly interpreted, a distinction has been sought to be introduced for the purpose of section 37 by specifying the nature of the building to be a guest house. The intention of the Legislature is clear and unambiguous: the intention was to

exclude from deduction the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purpose of a guest house of the nature indicated in sub-section (4) of Section 37. If the Legislature had intended that deduction would be allowable in respect of all types of buildings/accommodation used for the purpose of the business or profession, then the Legislature would not have felt the need to amend the provisions of section 37 so as to make a definite distinction with regard to buildings used as guest houses as defined in section 37(5) and the provisions of sections 31 and 32 would have been sufficient for that purpose.

When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give a meaning which would cause violence to the provisions of the statute."

In view of the authoritative pronouncement of the Apex Court, we must hold that the Tribunal was not right and justified in allowing the depreciation on guest house.

The Reference is answered in favour of the Revenue and against the assessee. It is accordingly disposed of. No costs.

sd/-
[R. S. Garg, J.]

sd/-
[D. H. Waghele, J.]

msp